

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Perez v. City of New York

Perez, 2025 NY Slip Op 06878 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2025) · No. 2022-05556 · Decided December 10, 2025

SUMMARY

The Appellate Division, Second Department, dismissed as nonappealable the portion of an order directing a conference concerning a charging lien and affirmed the order insofar as reviewed. The court held that nonparty attorneys who had never represented the plaintiffs lacked standing to seek disqualification of the plaintiffs' attorney based on an alleged conflict of interest.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Lara J. Genovesi, J.P.; Linda Christopher, J.; Deborah A. Dowling, J.; Laurence L. Love, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	December 10, 2025
DOCKET	2022-05556
DISPOSITION	dismissed
PROCEDURAL POSTURE	Nonparty attorneys appealed from an order denying their motion to disqualify the plaintiffs' attorney and directing a conference on their request for a charging lien.
PRECEDENTIAL VALUE	published
PARTIES	Kenneth J. Gorman, Wade T. Morris v. John P. DeMaio

TOPICS

- appellate jurisdiction
- interlocutory appeal
- standing
- civil procedure
- appellate procedure

PRACTICE AREAS

- civil procedure
- legal ethics and professional responsibility
- appellate procedure
- municipal law

QUESTIONS PRESENTED

1. Whether the appeal from an order directing a conference on a charging-lien request was appealable as of right.
2. Whether nonparties who had never been clients of the attorney sought to be disqualified had standing to seek that attorney's disqualification based on an alleged conflict of interest.

HOLDINGS

1. An order directing a conference on a charging-lien request, without disposing of that branch of the motion or affecting a substantial right, is not appealable as of right; because leave to appeal was not granted, the appeal from that portion of the order was dismissed.
2. A party who was never a current or former client of the attorney sought to be disqualified lacks standing to move for that attorney's disqualification based on an alleged conflict of interest.

KEY QUOTATIONS

“So much of the order as directed a conference on that branch of the motion of nonparties Kenneth J. Gorman and Wade T. Morris which was for a charging lien did not dispose of that branch of the motion and did not affect a substantial right and, therefore, is not appealable as of right” ([*1])

“Since Gorman and Morris were neither present nor former clients of DeMaio, they lacked standing to seek his disqualification as the attorney for the plaintiffs in the action” ([*2])

FACTUAL BACKGROUND

The underlying action sought damages for personal injuries and wrongful death. Nonparties Kenneth J. Gorman and Wade T. Morris sought to disqualify John P. DeMaio from representing the plaintiffs based on an alleged conflict of interest. It was undisputed that Gorman and Morris had never been clients of DeMaio.

PROCEDURAL HISTORY

In a personal-injury and wrongful-death action pending in Supreme Court, Queens County, nonparties Kenneth J. Gorman and Wade T. Morris moved to disqualify nonparty John P. DeMaio as counsel for the plaintiffs and sought a charging lien. The Supreme Court denied the disqualification request and directed a conference concerning the charging-lien request. The Appellate Division dismissed the portion of the appeal concerning the conference and affirmed the order insofar as reviewed.

DISPOSITION

dismissed

CASES CITED

- Schaff v. Schaff, 172 A.D.3d 1421, 1422
- Dowd v. Dowd, 74 A.D.3d 1013, 1014
- Sloboda v. Sloboda, 24 A.D.3d 533, 534

- Ellison v. Chartis Claims, Inc., 142 A.D.3d 487, 487-488
- Ogilvie v. McDonald's Corp., 294 A.D.2d 550, 552
- Rowley v. Waterfront Airways, 113 A.D.2d 926, 927

OPINION

PER CURIAM.

Perez v City of New York (2025 NY Slip Op 06878) Perez v City of New York 2025 NY Slip Op 06878 Decided on December 10, 2025 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on December 10, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department LARA J. GENOVESI, J.P.

LINDA CHRISTOPHER DEBORAH A. DOWLING LAURENCE L. LOVE, JJ. 2022-05556 (Index No. 701944/22) [*1]Hildania Perez, etc., et al., plaintiffs, v City of New York, et al., defendants; Kenneth J. Gorman, et al., nonparty-appellants; John P. DeMaio, nonparty-respondent. Kenneth J. Gorman, New York, NY (Wade T. Morris pro se of counsel), nonparty-appellant pro se and for nonparty-appellant Wade T. Morris.

John P. DeMaio, New York, NY, nonparty-respondent pro se. DECISION & ORDER In an action to recover damages for personal injuries and wrongful death, nonparties Kenneth J. Gorman and Wade T. Morris appeal from an order of the Supreme Court, Queens County (Kevin J. Kerrigan, J.), dated July 1, 2022.

The order denied that branch of the motion of nonparties Kenneth J. Gorman and Wade T. Morris which was to disqualify nonparty John P. DeMaio as the attorney for the plaintiffs and directed a conference on that branch of the motion of nonparties Kenneth J. Gorman and Wade T. Morris which was for a charging lien. ORDERED that the appeal from so much of the order as directed a conference on that branch of the motion of nonparties Kenneth J. Gorman and Wade T. Morris which was for a charging lien is dismissed; and it is further, ORDERED that the order is affirmed insofar as reviewed; and it is further, ORDERED that one bill of costs is awarded to nonparty John P. DeMaio.

So much of the order as directed a conference on that branch of the motion of nonparties Kenneth J. Gorman and Wade T. Morris which was for a charging lien did not dispose of that branch of the motion and did not affect a substantial right and, therefore, is not appealable as of right (see CPLR 5701[a][2][v]; Schaff v Schaff, 172 AD3d 1421, 1422; Dowd v Dowd, 74 AD3d 1013, 1014; Sloboda v Sloboda, 24 AD3d 533, 534).

Since leave to appeal from that portion of the order has not been granted, we dismiss the appeal from so much of the order as directed a conference on that branch of the motion of Gorman and Morris which was for a charging lien.

The basis of a motion to disqualify an attorney due to an alleged conflict of interest is an allegation of a breach of a fiduciary duty owed by an attorney to a current or former client (see *Ellison v Chartis Claims, Inc.*, 142 AD3d 487, 487; *Ogilvie v McDonald's Corp.*, 294 AD2d 550, 552). When the attorney sought to be disqualified has never represented the moving party, that attorney owes no duty to that party.

And, it follows that if there is no duty owed, there can be no duty breached (see *Ellison v Chartis Claims, Inc.*, 142 AD3d at 487-488; *Rowley v Waterfront [*2]Airways*, 113 AD2d 926, 927). Here, it is undisputed that Gorman and Morris were never clients of nonparty John P. DeMaio. Since Gorman and Morris were neither present nor former clients of DeMaio, they lacked standing to seek his disqualification as the attorney for the plaintiffs in the action (see *Ellison v Chartis Claims, Inc.*, 142 AD3d at 488; *Ogilvie v McDonald's Corp.*, 294 AD2d at 552).

Accordingly, the Supreme Court properly denied that branch of the motion of Gorman and Morris which was to disqualify DeMaio from representing the plaintiffs. The remaining contentions of Gorman and Morris need not be reached in light of our determination. GENOVESI, J.P., CHRISTOPHER, DOWLING and LOVE, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

PER CURIAM.

Perez v City of New York (2025 NY Slip Op 06878) *Perez v City of New York* 2025 NY Slip Op 06878 Decided on December 10, 2025 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on December 10, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department LARA J. GENOVESI, J.P.

LINDA CHRISTOPHER DEBORAH A. DOWLING LAURENCE L. LOVE, JJ. 2022-05556 (Index No. 701944/22) [*1]*Hildania Perez, etc., et al., plaintiffs, v City of New York, et al., defendants; Kenneth J. Gorman, et al., nonparty-appellants; John P. DeMaio, nonparty-respondent. Kenneth J. Gorman, New York, NY (Wade T. Morris pro se of counsel), nonparty-appellant pro se and for nonparty-appellant Wade T. Morris.*

John P. DeMaio, New York, NY, nonparty-respondent pro se. DECISION & ORDER In an action to recover damages for personal injuries and wrongful death, nonparties Kenneth J. Gorman and Wade T. Morris appeal from an order of the Supreme Court, Queens County (Kevin J. Kerrigan, J.), dated July 1, 2022.

The order denied that branch of the motion of nonparties Kenneth J. Gorman and Wade T. Morris which was to disqualify nonparty John P. DeMaio as the attorney for the plaintiffs and directed a conference on that branch of the motion of nonparties Kenneth J. Gorman and Wade T. Morris which was for a charging lien. ORDERED that the appeal from so much of the order as directed a conference on that branch of the motion of nonparties Kenneth J. Gorman and Wade T. Morris which was for a charging lien is dismissed; and it is further, ORDERED that the order is affirmed insofar as reviewed; and it is further, ORDERED that one bill of costs is awarded to nonparty John P. DeMaio.

So much of the order as directed a conference on that branch of the motion of nonparties Kenneth J. Gorman and Wade T. Morris which was for a charging lien did not dispose of that branch of the motion and did not affect a substantial right and, therefore, is not appealable as of right (see CPLR 5701[a][2][v]; *Schaff v Schaff*, 172 AD3d 1421, 1422; *Dowd v Dowd*, 74 AD3d 1013, 1014; *Sloboda v Sloboda*, 24 AD3d 533, 534).

Since leave to appeal from that portion of the order has not been granted, we dismiss the appeal from so much of the order as directed a conference on that branch of the motion of Gorman and Morris which was for a charging lien.

The basis of a motion to disqualify an attorney due to an alleged conflict of interest is an allegation of a breach of a fiduciary duty owed by an attorney to a current or former client (see *Ellison v Chartis Claims, Inc.*, 142 AD3d 487, 487; *Ogilvie v McDonald's Corp.*, 294 AD2d 550, 552). When the attorney sought to be disqualified has never represented the moving party, that attorney owes no duty to that party.

And, it follows that if there is no duty owed, there can be no duty breached (see *Ellison v Chartis Claims, Inc.*, 142 AD3d at 487-488; *Rowley v Waterfront [*2]Airways*, 113 AD2d 926, 927). Here, it is undisputed that Gorman and Morris were never clients of nonparty John P. DeMaio. Since Gorman and Morris were neither present nor former clients of DeMaio, they lacked standing to seek his disqualification as the attorney for the plaintiffs in the action (see *Ellison v Chartis Claims, Inc.*, 142 AD3d at 488; *Ogilvie v McDonald's Corp.*, 294 AD2d at 552).

Accordingly, the Supreme Court properly denied that branch of the motion of Gorman and Morris which was to disqualify DeMaio from representing the plaintiffs. The remaining contentions of Gorman and Morris need not be reached in light of our determination. GENOVESI, J.P., CHRISTOPHER, DOWLING and LOVE, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court